

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kim Mosolf	Team: Team # 5	CCRB Case #: 200202279	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 04/08/2002 7:30 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 40	18 Mo. SOL 10/8/2003	EO SOL 10/8/2003	
Date/Time CV Reported Mon, 04/08/2002 8:52 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/08/2002 8:52 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Christophe Schmidt	02029	907284	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Sbarra	05853	920813	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Christophe Schmidt	Abuse: Sgt. Christopher Schmidt stopped and questioned § 87(2)(b)	§ 87(2)(b)
B.SGT Christophe Schmidt	Abuse: Sgt. Christopher Schmidt frisked and searched § 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Synopsis

On April 8, 2002 at 7:30PM, § 87(2)(b) § 87(2)(b) was returning home from the grocery store, where he had been buying bread for his grandmother and legal guardian, § 87(2)(b). As he approached his building, walking down § 87(2)(b) he saw a silver car approaching him slowly. It pulled to a stop and Sgt. Christopher Schmidt and PO Daniel Sbarra, both in plainclothes, ran out of the car towards him. The officers asked him to stop and inquired if he had a gun on him. § 87(2)(b) § 87(2)(b) complied and stated that he had no gun. Sgt. Schmidt allegedly frisked him from the ankles to the waist and searched the front and back pockets of his jeans.

PO Sbarra stood three feet away, said nothing, and had no contact with § 87(2)(b). When Sgt. Schmidt was finished frisking § 87(2)(b) he gave him permission to leave. § 87(2)(b) protested and asked why he had been stopped in the first place. When a friend's mother, who had been watching the incident, also protested and told the officers that § 87(2)(b) was a good kid, Sgt. Schmidt spoke with her. § 87(2)(b) ran upstairs and told his grandmother, who came downstairs too late to catch the officers.

§ 87(2)(b) filed the complaint later that evening.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Summary of Complaint

Complainant/Victim: § 87(2)(b)

The original complaint was filed by § 87(2)(b) on April 8, 2002 (Enc. 5) and was consistent with § 87(2)(b)'s later statements, although she was not a direct witness to the event.

§ 87(2)(b) § 87(2)(b) was interviewed at the CCRB on April 17, 2002 (Enc. 6a-d). On April 8, 2002 at approximately 7:30PM, § 87(2)(b) was returning from the grocery store, Pioneer's, where he had been buying bread for his grandmother and legal guardian, § 87(2)(b). As he was walking towards his building on § 87(2)(b) he saw a silver car, possibly a Nissan, slowly driving towards him. He paused and made eye contact with the two White males in the car, but continued walking on. He was standing in front of a child care center when the car came to a stop and the two White males ran out of the car towards him.

Officers later identified as PO Daniel Sbarra and Sgt. Christopher Schmidt approached § 87(2)(b) and asked him, "Would you please stop," to which § 87(2)(b) complied. They then asked him if he had a gun on him, which § 87(2)(b) denied. One of the officers frisked him, starting at his feet and moving up his body. This officer also searched the front and back pockets of § 87(2)(b)'s jeans. He then told § 87(2)(b) "You may go now." When § 87(2)(b) protested and asked why he had been stopped and searched, PO1 replied, "Just go, just go." § 87(2)(b) did not curse or yell at the officers when questioning their intention. The officers never cursed or yelled at him. The officers never used a police radio in § 87(2)(b)'s presence.

The other officer was standing behind the officer who frisked § 87(2)(b) approximately three feet away. He never touched § 87(2)(b).

§ 87(2)(b)'s friend's (§ 87(2)(b)) mother was watching the scene and told the officers to leave § 87(2)(b) alone, as he was a good kid and the neighborhood knew him. One of the officers told her to "Shut up," and they "went back and forth" while § 87(2)(b) ran upstairs and told his grandmother. She immediately came downstairs. The officers had already left, but § 87(2)(b) spoke with the friend's mother, who related the incident. The entire incident lasted five to ten minutes.

§ 87(2)(b) was wearing blue jeans, a shiny gray RocaWear jeans jacket, and Michael Jordan sneakers. He has not seen these officers since the incident and had not seen them prior to the incident. § 87(2)(b) has never been arrested before.

Results of Investigation

Witnesses

§ 87(2)(b) stated that his friend's mother had been watching the scene and had protested, speaking with Sgt. Schmidt. Unfortunately, her name and contact information were not known. He also believed a friend of his father's, whose name and contact information was unknown, may also have passed by.

§ 87(2)(b) was asked to obtain some information on these potential witnesses, as there was nothing available to the undersigned investigator. Several phone calls were made to § 87(2)(b) to follow up on this information, but she stated that the woman had given bad information regarding her address, which proved to be false. § 87(2)(b) expressed little interest in following up on the witnesses, although it was expressed to her several times how important a witness account could be.

A field trip was not taken because the only information available on this woman was that she was a Black female living in one of the surrounding buildings.

Officer Identification

§ 87(2)(b) stated that the two unidentified, plainclothes officers had been driving a "silver, possibly Nissan" car. Vehicle logs were requested from several relevant commands and a grey, Chevy Caprice was identified as having two White, male officers assigned within the 40th Precinct, PO Daniel Sbarra and Sgt. Christopher Schmidt. The two officers were called down and interviewed at the CCRB, admitting to their part in the incident.

Although PO Sbarra was unsure whether he or Sgt. Schmidt had frisked § 87(2)(b) both officers were sure that they both had exited the car and approached § 87(2)(b) and Sgt. Schmidt was relatively sure that it had been he who had asked § 87(2)(b) questions and frisked him. Each officer claimed to have been the one who spoke to the protesting female witness. § 87(2)(g)

§ 87(2)(g)

Subject Officer: Sgt. Christopher Schmidt

Sgt. Christopher Schmidt was interviewed on May 23, 2002 at the CCRB (Enc. 7a-b). On April 8, 2002, Sgt. Schmidt worked a 5:30PM to 2AM shift in anti-crime patrol with PO Sbarra, dressed in plainclothes and using an unmarked, gray vehicle. At approximately 7:30PM, the officers were driving in front of § 87(2)(b) when they spotted § 87(2)(b) in the vicinity of this address. Sgt. Schmidt stated that this housing project is "shooting zone," designated by his precinct command.

Sgt. Schmidt stated that § 87(2)(b) was walking towards their vehicle, approximately ten feet from his car, when he spotted the officers. The expression on his face changed—Sgt. Schmidt stated that § 87(2)(b) gave him "the 'oh shit' look, for lack of a better word." He turned and began walking the other way, looking back at the car several times and reaching for his waistband several times. Based upon his behavior and the area he was in, the officers suspected § 87(2)(b) of having a weapon. They stopped the vehicle, now twenty to thirty feet from § 87(2)(b) both exited, and approached § 87(2)(b).

The officers asked § 87(2)(b) to stop, with which he complied, and Sgt. Schmidt asked him if he had any weapons. Sgt. Schmidt stated that § 87(2)(b) looked "a little surprised," but did not do anything else that elevated his level of suspicion. § 87(2)(b) stated that he had no weapons and the officers then asked him to put his hands up. They then frisked his waistband and found no weapons. They did not frisk the rest of his person and did not go into any of his pockets. Sgt. Schmidt asked him where he lived and § 87(2)(b) replied that he lived at § 87(2)(b). The officers then sent him on his way. They never asked for identification and Sgt. Schmidt believed that § 87(2)(b) was in his late teens or early twenties.

Sgt. Schmidt could not recall if he or PO Sbarra did the direct questioning or frisk, but believed that both of them dealt with him. Later in the interview, Sgt. Schmidt stated that he asked specific questions.

Sgt. Schmidt stated that the entire incident with § 87(2)(b) lasted only five to ten seconds.

Sgt. Schmidt recalled that there was a woman watching the scene from approximately twenty-five feet away, making "disparaging" comments and asking why the officers were harassing § 87(2)(b) Sgt.

Schmidt then approached her and explained to her that there are a lot of shootings in the area, § 87(2)(b) was acting suspiciously, and he was questioning him only to preserve safety in her neighborhood. This exchange was also quite short.

Sgt. Schmidt stated that § 87(2)(b) did not match the specific description of any individual for whom they were looking, but that his behavior raised the officers' level of suspicion.

Sgt. Schmidt could not recall if § 87(2)(b) was carrying anything with him. Sgt. Schmidt could not recall if he had prepared a stop and frisk report for this incident.

Witness Officer: PO Daniel Sbarra

On June 6, 2002, PO Sbarra was interviewed at the CCRB (Enc. 8a-d). He stated that, on April 8, 2002 he was working 5:30 PM to 2:30 AM with Sergeant Schmidt. They were assigned to anti-crime patrol in the 40th Precinct, in an unmarked silver/green vehicle, in plain clothes. He believed he was wearing jeans and a shirt, but cannot recall whether he was wearing a baseball cap. PO Sbarra had no entries in his memo book regarding the incident.

PO Sbarra stated that he and Sgt. Schmidt were driving at 7:30 PM down § 87(2)(b) a high-shooting zone location, when they noticed a young man, whom PO Sbarra believed to be approximately 19 years old, walking down the street. Although the man did not match any suspect description they had received, they knew it to be a high-shooting zone via information they had obtained from the Precinct.

§ 87(2)(b) turned and looked back at them, turned away and looked back again quickly, in the manner of a double take. PO Sbarra presumed at that point that § 87(2)(b) realized they were officers because he began walking away, constantly looking back at the car and adjusting his waistband with both hands. § 87(2)(b) continued walking in the direction he had been heading originally; at no point did he change course. PO Sbarra did not recall if § 87(2)(b) was carrying anything in his hands.

As the officers pulled up to him in the car, approximately ten feet from where he was, he began speeding up a bit and turned into the housing projects. PO Sbarra and Sgt. Schmidt at that point pulled over, told him to stop, got out of the car and took out their badges to identify themselves.

PO Sbarra does not recall if he or Sgt. Schmidt frisked § 87(2)(b)'s waistband. However, he stated adamantly that only the waistband area was frisked. At no point did they go down § 87(2)(b)'s legs or into his pockets. PO Sbarra and the Sgt. found nothing on § 87(2)(b) who was entirely compliant. They asked him his name and where he was going; he informed them he lived in the building. At no point did PO Sbarra ask for ID and he did not recall if § 87(2)(b) ever gave them his name, although he stated that Sgt. Schmidt might have asked. At that point, § 87(2)(b) was released and went back into the building without asking any questions or making any statements.

Standing approximately ten feet away from the incident was a short, heavy, Black female who asked the officers, "How come you're harassing him?" PO Sbarra gave the woman an explanation of what they were doing and then both officers got back into the car and drove off to another call. PO Sbarra stated that the entire incident occurred in under a minute. There had been no radio call regarding § 87(2)(b).

PO Sbarra was unsure if a stop and frisk report had been filed.

Documents

The vehicle log from the 40th Precinct (Enc. 10), cross-referenced with the roll call (Enc. 11a-b) yielded the identity of the subject officers. There is no stop and frisk report, as indicated by the stop and frisk log (Enc. 12). The map provided by the 40th Precinct indicates the high shooting areas of the precinct, which covers the place of occurrence for this incident (Enc. 9). The police communications yielded nothing in relation to this incident.

Conclusions and Recommendations

Credibility

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation A) Sgt. Christopher Schmidt stopped and questioned § 87(2)(b)

Police procedure 212-11 (Enc. 1) states than an officer can stop and question an individual if he “reasonably suspects a person has committed, is committing or is about to commit a felony or a Penal Law misdemeanor.”

Both PO Sbarra and Sgt. Schmidt stated that § 87(2)(b) walking alone at dusk in an area that the 40th Precinct classifies as a high shooting zone, was acting suspiciously. They both noted that § 87(2)(b) had an alarmed look on his face after making eye contact with them. Sgt. Schmidt recalled § 87(2)(b) changing his direction slightly after seeing them, although PO Sbarra could not confirm this. Both stated that § 87(2)(b) reached for his waistband area.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) Kamin’s Search and Seizure notes that the “United States Supreme Court has held that a police officer must have ‘a particularized and objective basis for suspecting the particular person of criminal activity....’” (Enc. 2) § 87(2)(g)

Allegation B) Sgt. Christopher Schmidt frisked and searched § 87(2)(b) Jr.

§ 87(2)(g) Police Procedure 212-11 (Enc. 1) states that a frisk is allowed if an officer “reasonably suspects himself or others are in danger of physical injury.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b). A search is only justifiable if the “frisk reveals an object which may be a weapon,” as stated in Police Procedure 212-11(Enc. 1). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: